

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Joseph Sawtell

v.

Civil No. 06-cv-229-SM

NH State Prison, Warden

NOTICE OF RULING

Re: Document No. 20, Motion for Relief from Stay of Proceedings

Ruling: It is a mystery how counsel could think that Petitioner's petition is now ready for preliminary review. In my July 13, 2006 order, I said: "A petitioner's remedies in New Hampshire are exhausted when the State's highest court has had an opportunity to rule on the petitioner's federal constitutional claims." The Merrimack Superior Court is not the highest court in New Hampshire. Secondly, Petitioner was ordered to provide copies of motions, petitions and briefs to demonstrate that the New Hampshire Supreme Court has had the opportunity to consider the federal constitutional nature of each of the four purported claims. He has not done so. Ordinarily, at this point I would recommend dismissal for lack of demonstrated exhaustion but that appears to be unfair since the fault appears to be the indifference or incompetence of counsel who was provided a roadmap on what he needed to do in my prior order. Within 30 days Petitioner is to demonstrate exhaustion or ask for a further stay to permit exhaustion. The Clerk is directed to provide a copy of this order to Attorney Gleason and to the Petitioner.


James R. Muirhead
U.S. Magistrate Judge

Date: May 8, 2008
cc: Thomas J. Gleason, Esq.
Scott F. Gleason, Esq.
Stephen D. Fuller, Esq.
Joseph Sawtell, Petitioner